Central Freight Lines, Inc. *and* International Association of Machinists and Aerospace Workers, AFL-CIO. Cases 16-CA-8186, 16-CA-8206, 16-CA-8388, and 16-CA-8600-2

April 2, 1981

DECISION AND ORDER

On May 30, 1980, Administrative Law Judge Richard J. Boyce issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,[1] and conclusions[2] of the Administrative Law Judge and to adopt his recommended Order, as modified herein.

The Administrative Law Judge found that Respondent violated Section 8(a)(1) of the Act by threatening employees with discharge, interrogating employees, and promising employees increased benefits, all because of union activity. The Administrative Law Judge also concluded that Respondent violated Section 8(a)(3) and (1) of the Act by discharging employees Billy Hudson, Keiller Davis, and Stewart Jones and suspending employee Douglas Higgins because they were involved with the Union. We agree with these conclusions. However, for the reasons stated below, we cannot agree with the Administrative Law Judge's conclusion that Respondent violated the Act when it discharged employee George Southerland.

The facts surrounding Southerland's discharge are undisputed. On November 15, 1978,[3] Southerland was involved in an accident with his pickup truck while driving to work. Southerland did not work that day, the remainder of the week, or the following Monday, allegedly because he was repairing an old car so that he could travel to work. On each morning of his absence, Southerland called the Dallas terminal, where he worked, to inform management he would not be working that day. However, on Friday, November 17, Southerland drove his wife to work in her car and then went to the Dallas terminal to obtain his paycheck. When questioned as to why he could not have used his wife's car to drive to work on the other days, Southerland responded that his wife needed the car in traveling to and from her job and in picking up their child from the nursery. Each spouse worked in different cities and had different starting and finishing times. Therefore, use of his wife's car, according to Southerland, was not feasible because he did not want his wife to stay at home and lose her job because of his accident. Although Southerland explained these facts to his supervisor, Aldridge, the latter merely responded that Southerland should have used his wife's car. Aldridge, when informed of Southerland's continued absence on Monday, November 20, spoke with Respondent's president in Waco, who instructed that Southerland be terminated.[4] Aldridge explained to Southerland that excessive absenteeism was the reason for his discharge.

The Administrative Law Judge concluded that Respondent discharged Southerland because of union activities. He found that Respondent was well aware of Southerland's leadership role in the union campaign, and Respondent had union animus, as evidenced by its discharge of employees Hudson and Davis a week earlier, and its 8(a)(1) violations described above. Although Southerland had missed a number of workdays in 1978, the Administrative Law Judge reasoned that Respondent had tolerated this behavior. He also found that Respondent had failed to use its published procedure on absenteeism cases. Finally, the Administrative

[1] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[2] Contrary to the Administrative Law Judge, we do not rely on the fact that Respondent "ignored" its recently enacted absenteeism procedure in affirming the Administrative Law Judge's conclusion that Respondent violated Sec. 8(a)(3) and (1) of the Act in discharging Hudson. As the Administrative Law Judge found, Respondent never utilized the procedure for any of its employees and, thus, its nonuse here, without more, cannot be ascribed to antiunion reasons.

Respondent excepted to the Administrative Law Judge's failure to find that Callan as well as Cothran testified about the committee meeting at which the decision to terminate Hudson was made and alleges as error the finding that employee Long had a worse absenteeism record than Hudson. Although we agree with Respondent that the Administrative Law Judge erred in making these findings, we conclude that, based on his other findings and the record as a whole, the Administrative Law Judge correctly concluded Respondent violated Sec. 8(a)(3) and (1) of the Act in discharging Hudson. Respondent also excepted to the Administrative Law Judge's conclusion that certain documents and memos introduced into evidence were not entitled to substantive weight in deciding the alleged violations concerning Hudson and Jones. However, in reaching his decision with respect to Jones, the Administrative Law Judge stated that even assuming this evidence was considered, the finding that Respondent violated the Act was still warranted. In a similar manner, the Administrative Law Judge, while concluding that Supervisor Bunch's memo of a meeting with Hudson concerning absenteeism should not be accorded substantive weight, nonetheless found that Hudson admitted Bunch spoke to him in a manner reflected by the memo. Thus, in each instance, the Administrative Law Judge considered the type of evidence Respondent sought to introduce by means of documents, even though he found the documents themselves not fully worthy of substantive consideration.

We agree with the Administrative Law Judge's findings and conclusions that Ashmore interrogated Hudson in violation of the Act. See *PPG Industries, Inc., Lexington Plant, Fiber Glass Division*, 251 NLRB 1146 (1980); *Centre Engineering, Inc.*, 253 NLRB 419 (1980).

[3] All dates are in 1978 unless otherwise indicated.

[4] The record indicates that all decisions to terminate employees must be made or approved by Respondent's headquarters' management located in Waco, Texas.

Law Judge concluded that Southerland's excuses for missing work in November were "fairly compelling," and the decision to terminate him was made before he could explain them. In this regard, the Administrative Law Judge noted that Respondent never warned Southerland that his absences because of the accident could lead to discharge, and reasoned that Respondent was merely "playing out rope" to allow Southerland unconsciously to place himself in jeopardy, because Respondent decided to rid itself of this union proponent.

We cannot agree that Respondent violated the Act by discharging Southerland. The General Counsel's burden is to demonstrate a *prima facie* case. The General Counsel did not sustain that burden in Southerland's case. Although he was involved with the Union, Southerland did not thereby cloak himself with protection from discipline or discharge. Respondent's union animus is readily apparent from this record, but this does not mean that it cannot discharge a union adherent so long as the discharge was not based on the adherent's union activity. It is not for the Board to substitute its judgment for that of an employer in deciding what are good or bad reasons for discharge. Thus, however "compelling" or sympathetic Southerland's reasons for missing work may have been, it was still within Respondent's province to act on Southerland's absences. And, as the Administrative Law Judge in effect noted, in Southerland's case there is no evidence of disparate treatment. Thus, the Administrative Law Judge found that no employee who had more absences was retained. Any burden of establishing the opposite fact lay with the General Counsel in the first instance. Although Respondent's policy on absenteeism was not uniform, it cannot be inferred from that alone that Southerland was terminated for his union activity. Thus, more than 48 employees had been discharged in 1978 at the Dallas terminal, many of them for absenteeism problems.[5] Nor does the fact that Respondent "ignored" its absenteeism procedure provide probative evidence of Respondent's motives, since Respondent *never* used that procedure for any employee.[6] Accordingly, we find that Respondent did not violate the Act when it discharged Southerland.[7]

[5] Hudson was allegedly discharged for missing "too much work." However, the Administrative Law Judge found that this asserted reason was a pretext to discharge Hudson because of his union activity. No such support in the record can be found in Southerland's case.

[6] See fn. 2, above.

[7] Chairman Fanning in agreement with the Administrative Law Judge would find that Respondent's discharge of Southerland violated Sec. 8(a)(3) and (1) of the Act. However, for the reasons set forth in fn. 2, above (in connection with the Hudson discharge), in doing so he would not rely on the fact that Respondent ignored its recently enacted absentee procedure.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Central Freight Lines, Inc., Ft. Worth and Irving, Texas, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following for paragraph 2(a):

"(a) Offer to Billy Hudson, Keiller Davis, and Stewart Jones immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent jobs, without prejudice to their seniority and other rights and privileges previously enjoyed, and make them whole for any loss of earnings or benefits suffered by reason of their unlawful discharges, with interest on lost earnings.[45]"

2. Substitute the attached notice for that of the Administrative Law Judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

To engage in self-organization

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To engage in activities together for the purpose of collective bargaining or other mutual aid or protection

To refrain from the exercise of any or all such activities.

WE WILL NOT tell employees that, if a union gets in, it "could happen" that "full-timers would be part-timers and . . . some wouldn't have jobs at all"; nor will we tell them, to discourage support of the Union, that a study is underway that could result in increased benefits.

WE WILL NOT interrogate employees about their union sympathies and activities.

WE WILL NOT caution employees that they "ought to think about" their roles with the Union.

WE WILL NOT ask employees "what kind of improvement" they think a union could bring.

WE WILL NOT in effect interrogate employees concerning their union activities by confronting them about soliciting for the union "harassing" "on company time," and WE WILL NOT warn employees that they will be subject to termination "if it happened again" that they solicited for the Union "on company time."

WE WILL NOT discharge, suspend, or otherwise discriminate against employees because of their union sympathies or activities.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them under Section 7 of the Act.

WE WILL offer to Billy Hudson, Keiller Davis, and Stewart Jones immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent jobs, without prejudice to their seniority and other rights and privileges previously enjoyed, and make them whole for any loss of earnings or benefits they suffered by reason of their unlawful discharges, with interest on lost earnings.

WE WILL make Douglas Higgins whole for any loss of earnings or benefits he suffered by reason of his unlawful suspension, with interest on lost earnings; restore to him any seniority and other rights and privileges lost because of that suspension; and expunge from our records any reference to that suspension, notifying him in writing that this has been done.

CENTRAL FREIGHT LINES, INC.

DECISION

STATEMENT OF THE CASE

RICHARD J. BOYCE, Administrative Law Judge: This matter was heard before me in Dallas, Texas, on June 13–15, June 20–22, and October 1–3, 1979. The charge in Case 16-CA-8186 was filed on November 13, 1978, that in Case 16-CA-8206 on November 29, 1978, that in Case 16-CA-8388 on March 19, 1979, and that in Case 16-CA-8600-2 on July 18, 1979, all by International Association of Machinists and Aerospace Workers, AFL-CIO (the Union). A consolidated complaint embracing Cases 16-CA-8186, 16-CA-8206, and 16-CA-8388 issued on May 3, 1979, alleging that Central Freight Lines, Inc. (Respondent), had committed certain violations of Section 8(a)(1) and (3) of the National Labor Relations Act, as amended (the Act). A complaint in Case 16-CA-8600-2 issued on August 9, alleging that Respondent had committed a further violation of Section 8(a)(1) and (3) of the Act. The General Counsel's motion that the latter matter be consolidated with the former was granted on October 1.

I. JURISDICTION

Respondent is a Texas corporation, headquartered in Waco, engaged in the transport of freight as a common carrier. It annually purchases and makes delivery in Texas, directly from outside the State, of items valued in excess of $50,000, and annually realizes revenues in excess of that amount from the transport within Texas of commodities going to or coming from other States.

Respondent is an employer engaged in and affecting commerce within Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

The Union is a labor organization within the meaning of Section 2(5) of the Act.

III. ISSUES

It is alleged that Respondent violated Section 8(a)(1) of the Act in late October and early November 1978 by interrogating employees about their union sympathies and activities, by promising benefits to employees to dampen their enthusiasm for the Union, and by threatening loss of jobs, to undermine employee support of the Union.

It is alleged, further, that Respondent violated Section 8(a)(3) and (1) of the Act by discharging four employees because of their union sympathies and activities—Billy Hudson on November 7, 1978; Keiller Davis on November 8, 1978; George Southerland on November 21, 1978; and Stewart Jones on March 15, 1979—and by suspending Douglas Higgins because of his union sympathies and activities on July 17, 1979.

IV. BACKGROUND

Respondent has 55 terminals throughout Texas, 2 of which are involved in this proceeding. One of those is in the Dallas suburb of Irving, and is called the Dallas terminal. The other is in Ft. Worth.

Respondent's employees have never had union representation. In 1976, a campaign was launched on behalf of an *ad hoc* organization known as CBB.[1] CBB presently evolved into a more formal organization, Central Freight Lines Employees' Association (CFLEA) and, in September 1977, a National Labor Relations Board election was held to determine if CFLEA would become the representative of Respondent's employees systemwide.

Respondent having won the election, some 160 employees met in Dallas in June 1978, deciding that they should seek representation by an AFL-CIO affiliate. That was followed by some informal organizational stirring; and, on August 9, as concluded by the Board in *Central Freight Lines, Inc.*, 246 NLRB 71 (1979), Respondent violated Section 8(a)(3) and (1) of the Act by

[1] CBB stood for Campaign for Better Benefits or Company for Better Benefits.

discharging two employees at the Dallas terminal—Charles Barrett and Bruce Haire—because of their part in that stirring.

A meeting was held in Huntsville, Texas, in October 1978, attended by about 40 employees and several officials of the Union, during which a campaign format was developed, and a new systemwide campaign began in earnest soon after. The new campaign was characterized by the distribution of leaflets and union authorization cards and the appearance on some of the employees of buttons, pocket savers, and pencils imprinted with the Union's insignia.

V. THE ALLEGED VIOLATIONS OF SECTION 8(A)(1)

A. *Ken Ashmore*

Allegation: It is alleged that, on October 25, 1978, Ken Ashmore, a dock foreman at the Dallas terminal and an admitted supervisor, interrogated an employee about his union activities, threatened employees with termination should the Union be successful in organizing Respondent's employees, and promised economic benefits to the employees to induce them to withhold support from the Union, in each instance violating Section 8(a)(1) of the Act.

Facts: In October 1978, Ashmore was the immediate supervisor of two crews, each consisting of about nine employees. On October 25, he held two meetings, one for each crew, with regard to the union campaign. Either Gene Hughett, dock superintendent, or Bill Mangham, a dock supervisor, had directed that he call the meetings. Hughett or Mangham also had provided him with a document setting forth lists of what union organizers can and cannot lawfully do, which was to be the frame of reference for his presentations. Ashmore testified at one point that he did not read the document "word for word" in the meetings, and at another that he "read this material straight from" the document. After he had finished with the document, Ashmore invited discussion.

During the discussion portion of at least one of the meetings, Ashmore was asked to compare Respondent's growth with that of nonunion carriers in the region. He replied that it had been "much greater" over the past 20 years—"our facilities had grown, our equipment had grown, the number of employees had grown, whereas the others had either stayed [in a] stalemate or [had] very little growth." He said that Respondent "had never had a union before and did not need one now," and that, as long as it remained nonunion, it "would continue to expand the number of people" it employed.

Continuing in this vein, Ashmore stated that, whereas Respondent operated with regularly employed personnel, both full- and part-time, the union carriers relied heavily on "casual-type or extra-board-type employment." He further noted that Brown Express was at the point, because of union restrictions, where it had more part-time than full-time employees. If the Union should get in, he went on, it "could happen" that some of Respondent's "full-timers would be part-timers and some . . . wouldn't have jobs at all."[2]

Ashmore also was asked, in the same meeting, about the status of Respondent's health insurance program. He answered that "a study was being made to find out" how the coverage afforded Respondent's employees compared with that provided by others in the industry, and that benefits "could be increased" based upon the outcome of the study.[3]

A few minutes after the meeting attended by Billy Hudson, one of those whose discharge is in issue, Ashmore engaged him in conversation. Ashmore had chosen Hudson because Hudson, but none of the others at the meeting, was wearing a pocket saver imprinted with the Union's name and insignia. Referring to the insignia, Ashmore asked if that meant that Hudson was "an organizer." Hudson replied, no, but that it did mean he was "on a committee." Ashmore offered: "Don't you think you ought to think about it awhile?" Hudson replied that he already had, or he "wouldn't be wearing" the insignia.

Ashmore then asked "what kind of improvement would it make" if there were a union. Hudson answered that the employees "would have a say" about being "bird-dogged."[4] A considerable discussion of bird-dogging followed.

Sometime during the exchange, Ashmore admonished that he did not want Hudson to be "harassed" because he "was . . . or might be sympathetic toward the Union," nor did he want Hudson "harassing any of [Ashmore's] men." Ashmore concededly had no reason to believe that Hudson would engage in harassment. He had made a similar statement, but without referring to any particular employee, during the employee meeting.[5]

Conclusions: It is concluded that Ashmore violated Section 8(a)(1) of the Act substantially as alleged by stating in the meeting that it "could happen" should the Union get in and that "full-timers would be part-timers

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[2] Billy Hudson is credited that Ashmore said this "could happen." His demeanor and recall, particularly in the face of arduous cross-examination, were most impressive. Ashmore, although admittedly speaking of Respondent's use of full- and part-time employees *vis-a-vis* union carriers, denied saying anything to the effect that jobs would be lost should the Union get in. Whether this places him in true conflict with Hudson, who recalled him as saying "could" rather than "would," is unclear.

[3] Ashmore admitted that he wished to impress upon his audience that "it could be possible that our benefits could be raised." Respondent did institute a new health insurance program in the spring of 1979. In the seeming effort to corroborate Ashmore and discredit Hudson, Respondent called John Andrews, who was at the meeting attended by Hudson. Andrews' testimony was self-canceling, however, for he was unable to recall things admittedly said by Ashmore, as well as things attributed to Ashmore by Hudson.

[4] Ashmore, although denying that the subject of bird-dogging came up in this conversation, indicated that it is a term familiar to him and that it means placing an employee under strict scrutiny in the hope of catching him in a mistake or "goofing off."

[5] Ashmore concededly admonished Hudson about harassment, but denied asking if Hudson were an organizer, if he did not think he should think about it awhile, or anything about the merits of having a union or why Hudson thought the employees needed a union. Ashmore also denied, as stated in the preceding footnote, that the subject of bird-dogging came up. To the extent that their versions differ, and except as admitted by Ashmore, Hudson is credited that the conversation was as above set forth. As noted in fn. 2, above, "his demeanor and recall, particularly in the face of arduous cross-examination, were most impressive."

and some . . . wouldn't have jobs at all," and by disclosing that a study was underway that could result in an increase in health insurance benefits. The former remark, although couched in terms of "could" rather than "would," carried the necessary implication that jobs would be imperiled, not through the bargaining process, but simply if the Union got in, and so was improper. *Hinky Dinky Supermarkets, Inc.*, 247 NLRB 1175 (1980); *Sportspal, Inc.*, 214 NLRB 917, 918 (1974); *Stumpf Motor Company, Inc.*, 208 NLRB 431, 432 (1974).

The evil of the latter remark, about the study and the possibility of improved benefits as a result, is that it was made in the context of an antiunion meeting and conveyed information that apparently had not been imparted before, and thus was likely to have impressed the employees that this was a development brought forth by the union ferment. *Renton Village Cinema*, 228 NLRB 377 (1977).

It is concluded that Ashmore also violated Section 8(a)(1) of the Act substantially as alleged by the aggregate in one conversation with Hudson of asking if he were an organizer, of suggesting that he "ought to think about" his role with the Union, of asking "what kind of improvement" a union could bring, and of warning that he was not to be "harassing any of" Ashmore's men. Whatever the legality of any of these comments in isolation, their cumulative impact was unavoidably coercive.

B. *Van Aldridge*

Allegation: It is alleged that, on or about October 31, 1978, Van Aldridge, assistant terminal manager at the Dallas terminal and an admitted supervisor, interrogated an employee about his union activities, violating Section 8(a)(1) of the Act.

Facts: On November 1, 1978, Aldridge told the aforementioned Billy Hudson that some of the employees had said that Hudson "was harassing them on company time" about the Union. Hudson said that this was "not true" and that he talked to the employees about the Union only "on my own time, such as breaks, before work, and after work." Aldridge then cautioned Hudson not to "be interrupting employees working trying to get them to sign cards on company time," adding that, "if it happened again," he would be "subject to termination."[6]

Conclusion: While Aldridge did not literally interrogate Hudson on this occasion, the tenor of his remarks was such that they were likely to elicit from Hudson certain information about his union activities.[7] It therefore is concluded that Aldridge violated Section 8(a)(1) of the Act substantially as alleged.

It is concluded that Aldridge's remarks violated Section 8(a)(1) of the Act for another reason. Bans against union solicitation "on company time" are presumptively unlawful. *John Rooney, David Hinman and Beverly Foster, d/b/a Rooney's at the Mart*, 247 NLRB 1004 (1980); *K. W. Norris Printing Co.*, 232 NLRB 985, 988 (1977); *Florida Steel Corporation*, 215 NLRB 97, 98-99 (1974). Respondent has made no convincing showing that the presumption should not be obtained in this instance. Therefore, by confronting Hudson about soliciting on company time, Aldridge in effect was imposing an unlawfully broad prohibition. The ensuing threat of termination "if it happened again" consequently was unlawful, too. *A.T. & S.F. Memorial Hospital, Inc.*, 234 NLRB 436 (1978).[8]

C. *Jimmy Cunningham*

Allegation: It is alleged that, on November 7, 1978, Jimmy Cunningham, assistant terminal manager at the Ft. Worth terminal and an admitted supervisor, interrogated an employee about his union sympathies and activities, violating Section 8(a)(1) of the Act.

Facts: Shortly before the start of work on November 7, 1978, Cunningham encountered Stewart Jones, another employee whose discharge is in issue, asking him how he felt "about the Union" and if he had "signed a union card." Jones, who was not to sign a card until the next day, replied that he had not signed.[9]

Conclusion: It is concluded, without need for discussion or citation, that Cunningham's questions of Jones violated Section 8(a)(1) of the Act substantially as alleged.

VI. THE ALLEGED VIOLATIONS OF SECTION 8(A)(3) AND (1)

A. *The Discharge of Billy Hudson*

Facts: Hudson worked on and off for Respondent from 1969 to 1974, and continuously from December 1974 until his discharge, allegedly because of his union activities, on November 7, 1978. He was a loader at the Dallas terminal when discharged.

That Respondent perceived Hudson as a prime union advocate before the discharge is revealed by the previously described instances, on October 25 and November 1, 1978, in which Ken Ashmore and Van Aldridge, respectively, spoke to him about his organizational activities in a manner violative of Section 8(a)(1) of the Act.

Respondent asserts that the discharge decision was triggered by Hudson's having lied to a supervisor on November 3, and was based on that and excessive absenteeism and tardiness. At or about 3:15 p.m. on Friday, November 3, Hudson asked one of his supervisors, James Norris, if he could leave work at 4, rather than at the normal quitting time of 6:48. Hudson added, untruthfully, that his other supervisor, Ashmore, had said it would be

[6] This is an amalgam of the generally corresponding testimony of Hudson and Aldridge. Their only notable conflict concerns when the conversation happened. Hudson testified that it was on November 1, while Aldridge averred that it was "some weeks, I can't be sure, maybe months" before Hudson's discharge, which was on November 7. Hudson's testimony on the point carried conviction and is credited.

[7] There can be no doubt, as indicated by Hudson's response, that Aldridge was referring to union solicitation when he used the term "harassing."

[8] That Aldridge made the one reference to "interrupting employees working" did not cure his use otherwise of the overly broad "on company time."

[9] Jones' testimony concerning this incident was convincing and is credited. Regarding its date, Jones gave this persuasive testimony: "I talked to Jimmy on 11-7 and then I got mad and went home and thought about it and signed the card on 11-8." Jones' signed card, bearing the date of November 8, is in evidence. Cunningham's assertions that such a conversation never happened and that the word "union" never came up in conversation between him and Jones were mechanically rendered and devoid of suasive thrust.

all right.[10] Hudson told Norris that he had to attend to some personal business, although his true reason for the request, so he testified, was that he was not feeling well. He testified that he did not think illness would be a sufficient excuse, Norris only recently having turned down his request to leave early for that reason.[11] Norris told him he could leave at 4:30, and he did. Norris intimated that Ashmore's apparent approval was a factor in his decision—"I respect another supervisor's judgment."[12]

That Hudson had misled Norris revealed itself soon after his departure. Gary Pursel, filling in for Norris while the latter was on break and not having been told of Hudson's release,[13] began to look for Hudson. The search led to Ashmore and Norris, and to the eventual realization among the three that Hudson had lied to Norris. The three thereupon apprised M. C. Cothran, then the assistant terminal manager, of the situation, declaring that they thought "something ought to be done about it." None, however, recommended discharge. Cothran directed Ashmore to prepare a memo of the incident,[14] said he would examine Hudson's personnel file, and indicated that the matter would be dealt with the next Monday.

Cothran testified that the Dallas management committee—T. H. Callan, who was the terminal manager, himself, Aldridge, and Andy Callan, terminal personnel director—met on Monday, the 6th, "looked through Billy's file, and . . . found [there] to be enough in his file on excessive absenteeism and tardiness that we felt like we ought to go ahead and take him off the payroll."[15] Cothran continued that a recommendation to that effect was conveyed to Respondent's systemwide executive committee in Waco, which gave its consent. All discharges must be cleared through Waco.

Among the file documents examined by the management committee, according to Cothran, were memorandums dated May 1 and September 19, 1978, concerning Hudson's attendance. That of May 1, purportedly prepared by Jim Bunch, a supervisor, stated:

> I talked to Billy [Hudson] about his attendance today. I explained to him that his attendance would have to improve. Billy was explained to by myself that unless he improves his attendance he could lose his job. Billy said he would try to improve.[16]

The September 19 document, prepared by E. H. Conway, dock foreman, stated:

> I talked to this employee [Hudson] today about his being absent so much. He has been absent 7 times this year for various reasons. I also talked to him about his production. His production has been under 6000 lbs. per hour for the last several weeks. I told him he would have to do better. He said he would try.

Apart from Cothran's summary rendition, there is neither testimony nor memorandum of what transpired during the Monday meeting of the management committee. Indeed, Aldridge testified that he was away from the terminal at the time and consequently had nothing to do with Hudson's discharge. Cothran, it will be remembered, placed Aldridge at the meeting.

Hudson did not report for work that Monday, calling in sick. Upon reporting on Tuesday, November 7, he was directed by Ashmore to see Andy Callan. Callan in turn told him to return at 1 p.m., which he did, at that time being told by Cothran that he was fired. Cothran explained that Hudson had "missed entirely too much work" and that Respondent was not "going to put up with it any more." Hudson asked about a coworker, Don Smith, whom he believed to have missed more work without being fired, prompting Cothran to state: "We are not discussing Don Smith."

On November 9, Andy Callan prepared an internal termination report giving these reasons for the discharge: "Unauthorized absence from work and failure to report to supervisor." On November 28, Cothran submitted a memorandum stating that he told Hudson that the reason for his being fired was "absenteeism and tardiness." In 1978 to the time of discharge, Hudson had had 2 weeks of excused absence in August because of a job-related injury, missed 9 other days (counting November 6) because of illness, and missed 1 day each because of jury duty, a court appearance, and bad weather. He was tardy twice.

The record reflects that Don Smith, while absent less than Hudson, had a severe tardiness problem—17 times in the first 11 months of 1978 and 39 times in 1977. On December 8, 1977, Dock Foreman Conway prepared a memorandum indicating that he then talked to Smith "about being late so much," and that he previously had "talked to him repeatedly about this," without success. Another Conway memo, dated December 30, 1977, noted that he had had "no luck at all" dealing with Smith's tardiness, and suggested that "someone else should talk to him."

The record further reflects that at least two other Dallas employees, Ed Bajer and Don Long, had more absences than Hudson in 1978, without being discharged.

[10] Hudson regularly worked under Ashmore's supervision until 2:30 p.m., then took a lunch break, and then came under Norris' supervision at 3.

[11] Hudson had asked Norris' permission to leave early three times in the recent past. Norris acceded the first two times, but refused the third request, even though Hudson claimed illness, because he did not believe that claim and Hudson "had been taking off quite frequently." Respondent has no sick leave policy.

[12] Hudson testified that, a few minutes after initially lying to Norris about Ashmore's having given approval, he told Norris that he had not talked to Ashmore and had been "kidding" when he said he had. Norris denied that this happened and is credited. Hudson's testimony in this regard simply did not carry conviction.

[13] Pursel frequently filled in for Norris between 4 and 5 p.m.

[14] Ashmore prepared a memo either that evening or over the weekend. It stated among other things: "At no time Friday Nov. 3 1978 did I speak to Hudson about getting off early. It is my opinion Hudson was let off by Norris because Billy he flat lied to Norris."

[15] The Dallas management committee became operative on January 1, 1978, to handle the affairs of the terminal. It was formed because W. C. Lackey, assistant terminal manager, had retired at the end of 1977 and T. H. Callan, terminal manager, was planning to retire. On June 30, 1979, T. H. Callan retired, Cothran was appointed to succeed him, and the management committee ceased to exist.

[16] Bunch not having testified, this memorandum was never authenticated in a manner entitling its contents to substantive weight. Hudson conceded, however, that Bunch had talked to him about his attendance.

On July 25, 1978, Bajer's supervisor prepared a memorandum noting that he had missed 11 days in the preceding 6 months and that the supervisor had "told him he was hired to work 5 days a week and I expected him to be here."

In November 1977, to reduce absenteeism at the Dallas and Houston terminals, Respondent established a program whereby, "after five instances of absence within a twelve month period,"[17] a committee consisting of a coworker of the offending employee, the employee's supervisor, and the personnel manager were to meet with the employee, after which "the committee will arrive at a recommendation as to whether or not the employee shall be retained on the payroll." There is no evidence that such a meeting was held with Hudson, or that such a committee ever functioned.

Ashmore testified that, apart from his absenteeism, Hudson was a "fair" employee.

Conclusion: It is concluded, in agreement with the General Counsel, that Hudson was discharged because of his union activities, in violation of Section 8(a)(3) and (1) of the Act.

This conclusion is based on these considerations:

(a) As witnessed by Hudson's being confronted first by Ashmore and then by Aldridge within a matter of days before the discharge, Respondent was aware of and concerned by his advocacy of the Union.

(b) As revealed by the unlawful discharges, 3 months earlier, of Dallas employees Charles Barrett and Bruce Haire, Respondent was capable of resorting to the extreme sanction of discharge to quell the union threat.

(c) In deciding Hudson's fate, Respondent ignored its own procedure, established only a year before, to deal with excessive absenteeism at the Dallas and Houston terminals.

(d) The stated reasons for the discharge are unpersuasive. That Hudson's having lied was not a significant factor is shown by Cothran's testimony regarding the November 6 meeting of the management committee that they "looked through Billy's file, and . . . found [there] to be enough in his file on excessive absenteeism and tardiness that we felt like we ought to go ahead and take him off the payroll." Indeed, this passage suggests that the committee was predisposed to discharge Hudson, and set out to find some colorably valid reason.

That absenteeism and tardiness were not the real reasons is disclosed by at least two others—Bajer and Long—having exceeded Hudson in number of absences, and by Smith's having been tardy an extravagant number of times, to Respondent's manifestly intense frustration, without being fired. Respondent's argument is rejected that, since Bajer was prounion and had more absences than Hudson, "no inference of disparate treatment based on union activities" can be drawn. There is no evidence that Respondent viewed Bajer's support of the Union with anywhere near the concern that it viewed Hudson's. Moreover, as stated in *Aeronca Manufacturing Company*, 160 NLRB 426, 435 (1966), "a discriminatory motive, otherwise established, is not disproved by an employer's proof that it did not weed out all union adherents."

[17] Andy Callan testified that an absence of more than 1 day, arising out of the same condition, is treated as one instance.

B. *The Discharge of Keiller Davis*

Facts: Davis was employed by Respondent from May 1973 until his discharge, allegedly because of his union activities, on November 8, 1978. He was a dockworker until July 1977, when he became a pickup and delivery driver at the Dallas terminal.

Davis signed a union authorization card on October 29, 1978; passed out 25 or so union cards in the week preceding his discharge; during that same period, espoused union representation to 30 or 40 coworkers at various places around the terminal; and, starting on or about November 2, wore a pocket protector at work bearing the Union's insignia and name.[18] Moreover, in late October, when asked by George Schults, the Dallas dispatcher and an admitted supervisor, if he knew of the union campaign, Davis said that he both knew of and was involved in it.[19]

Respondent's stated reason for the discharge, as set forth in an internal termination report prepared by Personnel Director Andy Callan on November 8, was "unsafe driving practices." Respondent further asserts that Davis' leaving the scene of an accident on November 7 was an adjunctive element. Davis backed into a closed overhead door at a customer's facility on November 7, causing about $200 damage to the door and none to his truck.[20] He immediately telephoned Schults, who said that Gary Ward, a safety supervisor, would be right out to investigate.[21] Davis also discussed the matter with a representative of the customer, expressing fear that he "would probably get fired" over it; then told the representative that he would make some pickups in the area while awaiting Ward's arrival.

Davis made the pickups, returning to the accident scene about 30 minutes later.[22] Upon returning, he saw Ward at the wrong location, and directed him to the damaged door.

Ward took pictures of the door and assured the customer's representative that Respondent accepted responsibility. The representative voiced the wish that Respondent not be "too hard" on Davis. Ward telephoned Bill Dougher, Respondent's pickup and delivery supervi-

[18] The pocket protector was white with blue and red print. It bore the words "Machinists Union" in letters 3/16th of an inch high, together with the Union's insignia, a cog wheel 1-1/2 inches in diameter. It was an identical protector, worn by Billy Hudson, that prompted Ashmore to single out Hudson for the unlawful remarks previously described.

[19] Davis also was prominent on behalf of CBB and CFLEA in 1976–77. Respondent concedes in its brief that this was "well known" to it because of numerous conversations between Davis and Aldridge concerning the pros and cons of union representation.

[20] The damage to the door consisted of a vertical crease, which apparently did not cause any functional impairment. Davis credibly testified that, when he checked the door shortly before the hearing, it had yet to be repaired.

[21] Schults testified that he also told Davis to remain at the scene until Ward's arrival. Davis denied being so told, and is credited. He came across as a sincere and capable witness, whereas Schults' testimony on this point seemed contrived to augment Respondent's case.

[22] Davis credibly testified that, after an accident in which he was involved at a Toyota dealership in 1977, the dispatcher (not Schults) instructed that he proceed with his route.

sor, at or about this point. There is no probative evidence of what was said, neither having testified. Van Aldridge testified, however, that Dougher then reported to him that this was Davis' third "chargeable" within a year,[23] whereupon Aldridge dispatched a relief driver to finish the route and asked T. H. Callan to convene the management committee to consider discharging Davis. The committee met even before Ward and Davis had returned to the terminal, reviewed Davis' "driving record and his driving performance," as Aldridge recalled, and decided that he should be fired. Clearance from Waco not being immediately forthcoming, Dougher was instructed to tell Davis, when he and Ward did get back, to punch out and return the next morning at 10.

Meanwhile, on their way to the terminal, Ward told Davis there would be a management meeting to consider disciplinary sanctions. There is nothing to indicate that Ward said anything to Davis, then or before, about leaving the accident scene. Sometime after their return, though, Ward prepared an investigation report which stated in part:

> Proper procedure not followed by our driver in reporting this accident, he left the scene to make other pickups and then returned upon my arrival.[24]

Aldridge, Andy Callan, and M. C. Cothran all testified that the management committee considered demoting Davis back to the dock, in lieu of discharge, but rejected the idea because of a policy supposedly adopted at Dallas in January 1978, coincident with the formation of the committee, disallowing disciplinary demotions.

Upon reporting on November 8, Davis was told by Dougher that he was being fired because he had too many chargeables. Davis protested that he had had only one other in the past year, at a Toyota dealership on November 15, 1977, which resulted in $41 in damage and that others had had more costly chargeables without being fired. Dougher replied that it made no difference. Davis pleaded that he needed a job and would accept demotion to the dock, as had been done with others. Dougher ended the conversation by telling Davis to go to personnel.

In the personnel office, Davis spoke with Andy Callan, repeating the appeal he had made to Dougher. Callan conceded that drivers had been demoted to the dock rather than fired in the past, "at the company's discretion," but said that Respondent did not wish to do that in this instance and that there was nothing Davis could do—"not a thing"—to save his job.

Andy Callan testified that a driver is subject to termination after three chargeables within a year, but that discharge does not inevitably follow. Indeed, Lonnie Echols incurred three chargeables in less than 6 months in 1978, and Robert Love had three within about 8 months in 1977-78, without losing their jobs. For that matter, Davis himself had three chargeables in 1977, one being that at the Toyota dealership. While Dougher supposedly told Aldridge that the November 7 accident was Davis' third chargeable in a year, the record—including Ward's written report of that accident—verifies Davis' claim that it was only his second, that at the Toyota dealership being the other. The record also discloses that, in October 1978, Respondent granted the request of Ronald Rogers, a Dallas driver, to return to the dock after he had been involved in two chargeables within a week. Rogers, unlike Davis, was not faced with the prospect of discharge when he made his request.

Gary Don Thomas, assistant director of safety at the time, testified that he and Ward surreptitiously followed a large number of Respondent's drivers in July 1978, observing and making note of many unsafe practices by "a very large number" of them. Among those observed was Davis, who was detected, according to Thomas, in "a host of unsafe driving practices." Afterwards, Thomas assertedly recommended to Aldridge that Davis be relieved of further driving duties. A report prepared by Thomas at the time itemized Davis' various unsafe practices, but gave no indication that Thomas felt him unfit for further driving. The report related that Davis at first was "defensive and unreceptive" in a followup counseling session, but became agreeable and cooperative. This report is said to have been among the items considered by the management committee in reaching its decision to discharge Davis.

Conclusion: It is concluded that Davis, like Hudson, was discharged because of his union activities in violation of Section 8(a)(3) and (1) of the Act.

This conclusion derives from Respondent's deep-seated union animus, previously documented, in combination with these additional factors:

(a) Davis was prominent in the organizational effort, and the inference is warranted that Respondent knew of this.

(b) Davis' discharge followed that of Hudson by only a day, indicating, together with other surrounding circumstances, that Respondent was engaged in a calculated purge of those it deemed central to the union campaign.

(c) The stated reasons for the discharge reek of pretext. Not only was the accident damage not great, but, contrary to the putative premise on which the management committee met and decided on discharge, this was only Davis' second chargeable—the other being even more minor—in over a year, not his third. Beyond that, even assuming Respondent to have been acting on the good-faith but mistaken belief that this was the third chargeable, at least two other drivers—Echols and Love—recently had incurred three chargeables in less than a year without job loss, as had Davis himself before

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[23] A "chargeable" is an accident in which Respondent's driver is deemed to have been significantly at fault.

[24] Aldridge's testimony was unequivocal that the management committee met and made its decision before the return to the terminal of Ward and Davis, and thus necessarily before the preparation of Ward's report. Aldridge testified that T. H. Callan called the meeting "when we got the report from Mr. Dougher" that this was Davis' third chargeable. Aldridge continued:

> [W]e made our decision and called Waco to make our recommendation and give them the facts on the case. We were unable at that time, I believe, to get in touch with them. So, when Gary Ward returned to the terminal with Mr. Davis, Mr. Dougher told Mr. Davis to report back in at 10:00 the next morning.

Respondent's brief to the contrary, there is no convincing evidence that the management committee "met and reviewed Ward's report" before deciding upon discharge.

involving himself in this latest union drive.[25] Moreover, Andy Callan admitted that, even after three chargeables within a year, discharge is discretionary.

Finally, as against the claim that Davis' leaving the scene of the accident influenced the discharge decision, there is no concrete evidence that the management committee, in its remarkable haste to take action, even knew of this until after its fateful meeting. Nor is it inferable that, had the committee known the circumstances of Davis' leaving, it would have found fault, absent his union activity. As noted, there is no evidence that Ward considered this sufficiently important to mention to Davis.[26]

C. *The Discharge of George Southerland*

Facts: Southerland worked for Respondent from September 1969 until his discharge, allegedly because of his union activities, on November 21, 1978. He was an unloader at the Dallas terminal when discharged.

In the fall of 1978, Southerland distributed prounion handbills at the terminal, passed out an estimated 400 union authorization cards in the parking lot and in break areas at the terminal, and otherwise proclaimed his union sympathies by wearing a button and a pocket saver with union insignia and displaying union stickers on his personal vehicle. He, in addition, had been a union observer during the 1977 Board election, and had received a warning in 1976 for handing out union literature in the parking lot.[27]

That Respondent appreciated Southerland's major role in the 1978 organizing effort was revealed by two conversations between him and Aldridge on or about November 1. An employee's car apparently had become scratched under circumstances causing him to suspect that Southerland, in an excess of prounion zeal, had been privy to the deed. The employee expressed his suspicions to Aldridge, who in turn sought out Southerland, admonishing him to get his "act together" and desist from intimidating tactics in aid of the union campaign.[28] A few days later, Southerland complained to Aldridge about being accused of such conduct, remarking that he was only 1 of 90 organizers at the Dallas terminal. A bystander, Gary Lawrence, interjected that it was because Southerland was "one of their head leaders," to which Aldridge added: "Yeah, you got a position just like I do. You pass it on down to your men just like I do."

Aldridge testified that Southerland was discharged because of his "absenteeism record" and because, during 4 days of absence immediately preceding the discharge, "he . . . could have gotten to work if he really cared about his job." On Wednesday, November 15, Southerland was involved in an accident while driving to work, "totalling" his pickup truck. He consequently missed that and the next 2 days of that week, as well as the Monday of the next, devoting a good deal of that time to making an old car he had at home roadworthy. He called in each day that he was absent, explaining his situation to whichever person in the office answered the phone, and he drove his wife's car to the terminal on Friday, November 7, first having driven her to work, to get his paycheck.

Southerland testified that public transportation is not feasible between his home in Allen, Texas, and the terminal, and that his wife needed her car to get to and from her job in McKinney and to gather their baby from the nursery before closing each day. Mrs. Southerland got off work at 4 p.m., the nursery closed at 6, and Southerland's shift did not end until 6:48.

Aldridge testified that Lee Roy Cox, dock superintendent, had apprised him daily of Southerland's continuing absence, and, upon learning from Cox on Monday, November 20, that Southerland again had called in that he would be absent, he phoned W. W. Callan, Jr., company president, who was in Waco. Aldridge's recital continued that after he described the situation to Callan, Callan advised that Southerland be fired.

Southerland finally got the old car working adequately on the night of 20, enabling him to report for work on Tuesday, the 21st. Upon arriving, he found that his timecard had been pulled, and Cox presently informed him that he was fired. Southerland asked why, and Cox said it came from "upstairs"—presumably a reference to higher management—because of "excessive absenteeism."

Southerland then went to Aldridge and again asked why he had been fired. Aldridge prefaced his response with the observation that he and Southerland had always had a "civil attitude toward each other" despite their disagreements. Aldridge then stated that the reason for the discharge was absenteeism, that company policy makes an employee subject to discharge after five "incidents" of absenteeism within a year,[29] and that Southerland by then had seven. Southerland asked if this referred only to unexcused incidents, to which Aldridge replied that "an incident [is] an incident."

Aldridge then brought up Southerland's just-concluded 4 days of absence, prompting Southerland to detail the circumstances preventing his earlier return. Aldridge was unmoved, declaring that Southerland, as the family "breadwinner," should have used his wife's car. Southerland countered by asking why he should jeopardize her job by taking away her transportation, adding that it was not her fault that he had a wreck.

In 1978 to the time of his discharge, Southerland missed 15 days for reasons other than vacation—8 because of illness, 1 because of a death in the family, 2 because he "got robbed and lost all his belongings," and the 4 just described. In July, when he asked Cox for a

[25] Respondent again makes the argument that, since Echols was prounion and had an accident record worse than Davis', "no finding of disparate treatment based on union activity" can be made. This argument is rejected for the reasons advanced in the discussion of Hudson's discharge.

[26] This indicates, of course, that Ward's remarks in his report of the accident, to the effect that Davis had not followed proper post-accident procedure, were after-the-fact makeweight.

[27] Southerland's efforts in 1976–77 were on behalf of CBB and CFLEA. The 1976 warning was memorialized in writing by W. C. Lackey, assistant terminal manager, and placed in Southerland's personnel file.

[28] There is no evidence that Southerland, in fact, had anything to do with whatever damage was done to the car.

[29] This policy, instituted in November 1977, is described above in the discussion of the Hudson discharge. As there indicated, discharge is not mandatory after five incidents or instances.

day off in connection with the death in the family, Cox hesitated before letting him go, commenting that he had "already missed a lot of time." Other than that, there is no evidence that Southerland ever was admonished because of absenteeism, nor is there evidence that memorandums ever were placed in his file indicating a problem in that regard.[30]

As mentioned earlier in connection with the Hudson discharge, Respondent's "five instance" policy, as posted, provided for a meeting of the overly absent employee with a committee consisting of a coworker, the employee's supervisor, and the personnel manager, after which the committee was to recommend whether the employee should be retained. This procedure was not observed as concerns Southerland, just as it was ignored in Hudson's case. But then, again as earlier indicated, there is no evidence that it has ever been invoked.

Southerland testified to a belief that a coworker, Chuck Estes, once was granted 3 or 4 days off to repair his car. Estes' supervisor, Larry Thetford, testified that, in February 1978, he gave Estes one day off to fix his car, not 3 or 4. Estes did not testify. Thetford, being manifestly more competent on the point than Southerland, is credited.

Conclusion: It is concluded that Southerland also was discharged because of his union activities, in violation of Section 8(a)(3) and (1) of the Act.

Supportive of this conclusion, apart from the antiunion feelings that prompted the discharges of Hudson and Davis 2 weeks before, are these elements:

(a) As revealed by the conversations with Aldridge about 3 weeks before his discharge, Southerland was regarded as a leader of the union campaign.

(b) By any objective standard, Southerland's reasons for missing the 4 days immediately preceding the discharge, if not overwhelming, were fairly compelling. Additionally, the discharge decision was made without giving him a chance to present those reasons. Further, although Cox and Aldridge monitored Southerland's absence on a daily basis, and although Southerland was in daily communication with the terminal, no one bothered to tell him that he was placing his job in greater jeopardy with each passing day. The inference thus is strong that Respondent was calculatedly "playing out rope," hoping for Southerland to hang himself—a most unlikely tactic were there not an ulterior motive.

(c) As in the case of Hudson, Respondent ignored its earlier published procedure to deal with excessive absenteeism.

(d) Although Southerland missed a substantial number of days in 1978, there is nothing to indicate that Respondent considered him a particular problem in that regard. And, while there is no evidence that Respondent tolerated anyone who missed more work in 1978, neither is there evidence to the contrary.

[30] As in the case of all absences for whatever reason, Cox placed a note in Southerland's file reflecting that he was absent for a funeral on July 21, 1978. The note does not reflect Cox's hesitance to grant the time off, nor does it in any way imply that Cox had warned Southerland about absenteeism. The statement in Respondent's brief that the note remarked on "the fact of the warning" is unfounded.

D. *The Discharge of Stewart Jones*

Facts: Jones worked for Respondent from 1964 until his discharge, allegedly because of his union activities, on March 15, 1979. He was one of about 116 pickup and delivery truckdrivers at the Ft. Worth terminal when discharged.

Jones signed a union authorization card on November 8, 1978. He credibly testified that he also passed out cards to several coworkers, in the break room at the terminal, at or about that same time, and distributed union literature to coworkers on three occasions in late 1978 and early 1979, likewise in the break room.[31]

Respondent denies any predischarge awareness of Jones' union activities, and Jones admittedly did not undertake them in the presence of management. The weight of evidence nevertheless warrants the inference that Respondent knew or at least suspected. In the first place, the break room routinely is frequented by employees and management alike. Second, the room is flanked by the offices of the terminal manager, M. D. Dooley, the assistant terminal manager, Jimmy Cunningham, and the dispatchers, and each has a window facing it. Third, Cunningham admittedly saw Jones in the break room before work "every day." Fourth, Jones credibly testified that, in November 1978, as he spoke with known Union Official T. J. Smith outside the terminal, while prounion handbilling was being carried on, he saw Dooley and Cunningham observing from a window in the terminal.[32]

Fifth, Jones credibly testified that, on November 7, 1978, he was told by his brother, Larry, a driver-instructor for Respondent, that he had been reported to Cunningham "as a union pusher," and that Larry advised him to avoid Bill Row and Ron Neuville, who happened to be union activists, because they were bad for Jones and "the Union is bad for the company." Although Larry was not a supervisor, at least so far as the record shows, it is assumable that he was speaking for Respondent inasmuch as Dooley had told him at or about that time that he would "appreciate it" if Larry spoke to Jones about his "many problems." Sixth, also on November 7, not long after Larry spoke with Jones as just described, Cunningham interrogated Jones about his union sentiments and activities in a manner previously found to have violated Section 8(a)(1) of the Act.[33] Finally, Jones credibly testified that, before work on the morning of March 14, 1979—i.e., the day before his discharge—he, Row, and Neuville were seated in the break room with

[31] Jones worked from 8 a.m. to 6 p.m., with an hour off for lunch. He and many of the other drivers regularly gathered in the break room at or about 7:30 each morning to socialize, which is when Jones distributed the cards and literature.

[32] Jones, himself, did not handbill at this time.

[33] Jones' affidavit states that Larry spoke to him in December. His testimony was persuasive, however, that it happened before, and on the day of, Cunningham's interrogation, and, as noted in fn. 9, *supra*, he credibly testified that the interrogation occurred the day before he signed a union card, which was November 8. Dooley testified that he asked Larry, on November 14, to speak to Jones. There being no evidence that Larry spoke to Jones at another time pursuant to Dooley's request, it is inferable that the request was made on or before November 7, and that Larry's words to Jones, as here set forth, were in implementation of the request.

union printed matter arrayed on a table in front of them when Cunningham "circled" the table, seemingly looking at the items on it.[34]

Dooley testified that an accumulation of performance factors contributed to the discharge decision, the culmination being a report that Jones had "popped" a clutch—i.e., released the clutch abruptly while the engine raced, causing his truck to lurch—on the morning of March 15.[35] When Jones first attempted to drive the truck he had been assigned that day, the vehicle moved forward a few feet and then stalled. Jones restarted the motor and drove the truck to the maintenance shop, where he complained to the shop superintendent, Jack Hull, that the clutch was too tight. Hull test-drove the truck around the terminal premises, after which he had the clutch adjusted and Jones embarked on his day's rounds. Hull testified that he did not think the clutch required adjustment, "but due to past experience with" Jones, he had a mechanic "give it additional clearance." Hull also testified that he, personally, does not normally conduct test-drives, but that he did in this instance because of "past experience" with Jones. He explained that Jones "asked us to adjust the clutch . . . almost everytime he came through the shop during this period of time," and that he frequently complained about the functioning of his two-way radio, as well.[36]

Harry Rosenstreter, a supervisor, was nearby when Jones' truck stalled the morning of March 15, and asked him why he had popped the clutch. Jones replied that he had not. Gary Don Watters, a supervisor, and Ralph Horton, a pickup and delivery driver, also were nearby. Both testified that Jones appeared to pop the clutch twice, the truck stalling the first time but not the second, prompting Horton to remark that Jones deserved to be fired and to further comment that he had seen Jones race his motor with the brake apparently on the day before, causing the clutch to stink "terrible." Jones, in his testimony, denied that he purposely popped the clutch on March 15 or any other time.

Later the morning of March 15, Watters told Dooley what he and Horton had seen, together with what Horton reportedly had observed the day before. Dooley replied that he would investigate, whereupon he spoke with Hull, ascertained that Hull had test-driven Jones' truck and that the clutch had been adjusted that morning. Hull did not recommend that Jones be discharged.

At or about 11 that morning, and without talking to anyone else about the matter, Dooley telephoned Waco, speaking with Don Thompson, executive assistant to W. W. Callan, Jr., company president. The conversation lasted 10 to 15 minutes, according to Dooley, during which he stated that he had "completely given up" on Jones and asked for authorization to discharge him. In support of his request, Dooley assertedly read to Thompson "almost in their entirety" some 10 memorandums, ranging in length from 1 to 3 pages, in supposed documentation of Jones' numerous failings and Respondent's efforts to help him overcome them. Four of those documents were dated March 15, one ostensibly authored by Watters, three by Hull.

Dooley and Thompson had a second telephone conversation, "shortly before" noon and lasting 1 or 2 minutes, according to Dooley, and, that afternoon, Respondent's systemwide director of personnel, M. A. Taylor, appeared at the Ft. Worth terminal. Dooley initially testified that Taylor then authorized the discharge, only to aver later that Taylor's visit had nothing to do with Jones and that Thompson had conveyed Waco's permission in the second telephone conversation.[37]

Returning to the terminal at the end of the day, Jones did the customary paperwork, after which he was summoned before Dooley and Cunningham.[38] Dooley announced that he had sought and obtained permission from Waco to discharge Jones. He added that Jones had been seen popping a clutch that morning, that Respondent had worked with him "for several months in many areas" trying to improve his performance, and "there had been no improvement whatsoever," and that he consequently had recommended discharge. Jones protested that he had not popped the clutch and that this was unfair, but to no avail.

The day before the discharge, Jones was unable to drive his truck after the lunch break because of a burned out clutch. Another truck was sent, the load was transferred, and Jones finished the day with the replacement truck. Cunningham testified that it was this incident that triggered the discharge, while Hull testified that another driver could have been responsible for the clutch burning out. That clutch had received a make-do adjustment the morning of March 14, the mechanic telling Jones to bring it in again in the evening for additional work.

Respondent acknowledges that Jones was a trouble-free employee for most of his tenure, contending that problems began in 1977, roughly coincident with a divorce. Cunningham testified that, in 1977–78, four different customers made perhaps as many as 18 complaints about Jones; that Jones persisted in misusing the two-way radio in his truck starting at or about that time, engaging in needless talk in the mornings and ignoring the dispatchers' calls in the afternoons; that he grew careless about how freight was stacked in his truck, causing various dock supervisors to complain to Cunningham; and that poor route planning extended his road time unnecessarily. Cunningham's information with regard to much of this plainly was secondhand. His testimony and the

[34] Cunningham denied seeing the materials, and he said nothing at the time to indicate otherwise. His denial did not carry conviction, however, and is at odds with the probabilities inherent in the situation. The plan, according to Jones, was to distribute the materials as the employees entered the break room before work that morning.

[35] It is undisputed that the deliberate popping of a clutch is an abuse of equipment.

[36] Hull conceded, however, that Jones made few complaints when driving his regularly assigned truck, which he was not doing on November 15, and that he did not know Jones to complain when nothing was wrong.

[37] After stating that Taylor was not involved, Dooley testified that Taylor asked him why he "was releasing" Jones, and that he "went over it very briefly with" Taylor.

[38] The log of the truck driven by Jones reveals that it returned to the terminal at 5:48 p.m. on the 15th; and Jones' timecard discloses that he clocked out a few minutes after 6. Jones consequently is not credited that he was told by the dispatcher, just after lunch, that he was to return to the terminal, and that he then returned at or about 2 in an empty truck brought by a relief driver, who finished the route.

record generally suggest that those with first hand information were, for the most part, Jim Holloway, a supervisor, and Sid Bailey, a dispatcher, neither of whom testified. As if to bridge this gap, Respondent makes frequent citation in its brief to various memorandums purportedly authored by Holloway or Bailey and supposedly read by Dooley to Thompson on March 15, ignoring that those documents were not authenticated in a manner entitling them to substantive weight.

Abstractions and hearsay aside, there nevertheless is credible evidence that Jones was not a model employee. On January 31, 1979, his truck was found to be seriously low in oil, apparently because he either misread or failed to check the dipstick. He was rebuked by Dooley and Cunningham as a consequence, being told that he "need[ed] to get his act together" if he wished to continue driving for Respondent. In November 1978, he was in protracted conflict with a dispatcher whether he or someone else should deliver to a certain location, the result being a several-day delay in delivery and a counseling session with Dooley and Holloway. And he three times took a cash advance from collection envelopes without submitting his personal check in exchange. This did not cause any loss of money, however, and ceased being a problem months before the discharge.

Cunningham testified that, whenever he heard of a complaint or problem involving Jones, he dutifully reported it to Dooley. Regarding Respondent's forbearance in the face of the difficulties attributed to Jones, Cunningham testified: "We have always felt that we would rather work with a man that is experienced and keep him on the payroll, which is why we worked with Jones." Similarly, Dooley testified that he instructed Cunningham "to work with this employee and try to correct his problems" and that he told Sid Bailey "to work with this employee in every way he possibly could."

Hull testified that he had seen Jones pop a clutch more than once, elaborating:

> I have seen him from time to time from my office window when he would start off, the truck would lurch forward, front wheels bounce when he started his truck off.

Hull then conceded that the popping of a clutch is not the only thing that can cause a vehicle to behave in this fashion.

Jones was one of only two Ft. Worth drivers discharged in 1977, 1978, and 1979. In October 1978, he was inducted into Respondent's "Tenth of a Century Club," signifying 10 years of driving without a chargeable accident. He was awarded a watch and a plaque.

Conclusion: It is concluded, again in agreement with the General Counsel, that Jones was discharged because of his union activities, in violation of Section 8(a)(3) and (1) of the Act.

The bases for this conclusion, aside from Respondent's decided union animus,[39] are:

(a) Jones was actively prounion, and, as mentioned before, the weight of evidence warrants the inference that Respondent knew of this.

(b) Just a day before the discharge, Jones was in the break room with union materials arrayed conspicuously in front of him when Cunningham "circled" his table.

(c) While Rosenstreter's comment, when Jones' truck stalled, indicates that the truck had lurched as if the clutch had been popped, Hull's decision moments later to have the clutch adjusted discloses that a mechanical problem did exist.[40] This not only tends to corroborate Jones that he did not purposely pop the clutch,[41] but also suggests an invidious focusing by Respondent on the appearance rather than the reality of what had happened, to give colorable validity to the discharge.

(d) Supposing that Jones did deliberately pop the clutch on the day of discharge, there is no evidence that he had ever been warned for so doing, even though Hull testified that he had seen Jones apparently do it "from time to time." This indicates that the practice, while not good for a vehicle, normally is viewed less seriously than Respondent now represents.

(e) Respondent's failure to call as witnesses those with seemingly the most first hand knowledge of Jones' performance, Holloway and Bailey, while nevertheless relying heavily on memorandums and oral reports purportedly prepared or given by them, casts doubt on the substantive veracity of those documents and alleged oral reports, and raises the suspicion that much of the second-hand testimonial commentary on Jones' shortcomings was overstated, if not contrived.

(f) On the other hand, if Jones' failings in the 2–3 years before discharge were as recurrent and pronounced as Respondent would have us believe, that likewise would indicate that his being discharged 1 day after being in the break room with union materials had an antiunion trigger. This would seem particularly so in light of the recent history of almost no driver discharges at Ft. Worth despite a large complement, coupled with Jones' award-winning safety record and the Ft. Worth policy of working to salvage rather than lose experienced people.

(g) Respondent to the contrary, it is apparent that Taylor, the systemwide director of personnel, made a special trip from Waco to Ft. Worth to assess the situation and authorize the discharge. This reveals that the discharge was seen as a matter of great sensitivity, involving other than the usual performance considerations. Moreover, Dooley's conflicting testimony about Taylor's role—first, that he authorized the discharge, then, that he had nothing to do with it—discloses an awareness that the truth would inculpate.

[39] Waco being at the core of discharge decisions, systemwide, the animus factor obtains no less at Ft. Worth than at Dallas.

[40] Hull is not credited that he had the clutch adjusted "due to past experience with" Jones, even though he did not think it necessary. Hull elsewhere admitted that he never knew Jones to complain when nothing was wrong, and Respondent plainly was not disposed to indulge Jones' whims.

[41] As Hull conceded, clutch popping is not the only thing that can cause a truck to lurch and rear.

E. *The Suspension of Douglas Higgins*

Facts: Higgins, a forklift operator at the Dallas terminal, has been on the payroll since 1969. At issue is a 30-day suspension given him on July 17, 1979, retroactive to July 13. The suspension occurred during a hiatus in the present hearing, after which, as earlier indicated, the General Counsel's motion was granted to consolidate this with the matters already being tried.

Higgins has been prominent in efforts to organize Respondent's employees for some time, as Respondent well knew long before the suspension in question. A memorandum prepared by W. C. Lackey, assistant terminal manager, in October 1976 referred to Higgins as "a CBB organizer," and he was a union observer in the election of September 1977 to determine if the employees would be represented by CFLEA. More recently, Lee Roy Cox, dock foreman, directed Higgins to remove union authorization cards from his forklift in January 1979, and, during the June 13 session of the present hearing, after detailing his own considerable involvement in the more recent organizational effort, George Southerland testified, in response to a question by Respondent's counsel, that Higgins was and continued to be "as active" in that regard as Southerland had been.

Respondent asserts that Higgins was suspended because of two instances of unwarranted talking and wasting of time on July 12. The first occurred at or about 11 a.m., according to Cox, when he observed Higgins and a coworker, Roy Vrana, chatting idly for from 3 to 5 minutes. Cox testified that he intervened at the earliest opportunity, first giving Vrana an assignment and then admonishing Higgins that he had been talked to and warned before about wasting time in this fashion, and that Cox could not "tolerate it any longer." Higgins asked if Cox were "singling" him out, and Cox replied that he had spoken to everyone about this.[42] With that, Cox continued, Higgins shrugged, said "okay," and drove off. Cox did not rebuke Vrana, explaining: "Roy is not the type of guy that kills time."

The second incident is said to have occurred at or about 1:30 p.m. Gary Pursel, outbound dock supervisor, testified that he saw Higgins talking nonproductively with Mario San Miguel, a coworker, at that time. The motor of Higgins' forklift was off, according to Pursel, and Higgins was slouched in the seat with his feet on the dashboard. Pursel related that, as he approached the two, Higgins quickly started his machine and moved on. Pursel admittedly said nothing to either employee about this.

Higgins testified that he received a rebuke from Cox, pretty much as described by Cox, but that it came after a conversation with San Miguel, not Vrana. He added that he had no specific recall of a conversation with Vrana that day. Higgins further testified that his conversation with San Miguel had consisted of his asking if there were any freight for him to load, and that it lasted 2 minutes at the most. San Miguel's version more or less echoed Higgins', although he testified that he did not see Cox or anyone else nearby. Vrana did not testify.

Cox is credited that he spoke to Higgins after a conversation between Higgins and Vrana. Had things happened as related by Higgins, San Miguel surely would have sensed Cox's proximity. Additionally, Pursel is credited regarding Higgins and San Miguel. His recital having been elicited during Respondent's case, various of its details—that the motor was off and that Higgins' feet were on the dashboard—surely would have been met with rebuttal testimony, which they were not, had counsel for the General Counsel and Higgins thought them to be seriously in error. Moreover, and as later set forth in more detail, Higgins did not take issue with the statement in his suspension letter, received July 17, that he had been "noticed on two different occasions on Thursday, July 12, 1979, to be interfering with the work of Mario San Miguel and Roy Vrana."

After the events just described, Cox and Pursel prepared written reports of what they had seen. Cox's report stated:

> This morning Douglas Higgins was not carrying out his duties as a forklift operator. He was sitting on the forklift in the middle of the dock and keeping Roy Vrana from doing his work.
>
> Mr. Higgins has previously been warned repeatedly about not interfering with others in performing his duties. This employee continues to interfere with operations and I cannot perform the duties assigned to me with employees who cannot carry out their duties and interfere with others.

Pursel's report stated:

> Doug was sitting on his forklift with the motor turned off in the 133 door instead of going about his duties moving freight from the strip-out side. Doug was interfering with Mario San Miguel's assigned duties in the load-out area. When Doug saw me he made a move to start his lift and leave the area.

Cox submitted his report to Gary Ellis, a dock superintendent, at or about 3 that afternoon. Ellis in turn delivered it to the terminal manager, M. C. Cothran, along with his oral recommendation that Higgins be fired. Cothran summoned Gene Hughett, also a dock superintendent, showing him the report. Hughett remarked that Pursel had prepared a similar report, dealing with another incident. Pursel's report presently was obtained and read by the three of them. Cothran then told the other two that he would "get back to" them after he "had time to investigate" the matter and to "pull the file and talk to the general office" in Waco. Cothran directed Hughett, in the meantime, to "pull" Higgins' timecard and inform him that he was suspended until Tuesday, July 17.

At or about 5 p.m., still on July 12, Hughett told Higgins that he was suspended for excessive talking, and to report back on the 17th. Also in the late afternoon of the 12th, Cothran had a telephone conversation with W. W. Callan, Sr., chairman of the board, who was in Waco.

[42] Cox testified that Respondent had an ongoing problem with needless talking, and that he had mentioned it on occasion in employee meetings.

Cothran described what had happened and asked for permission to fire Higgins. Callan demurred that he first wanted to "pull the file . . . and look into it and have time to think about it and do some investigation." He added that he would be in Dallas the next day, and would like to talk to Cox and Pursel sometime after lunch.

So it was that Callan met with Cox, Pursel, and Cothran on the afternoon of the 13th. Cox and Pursel told their stories, and Cothran pressed for discharge. Callan said he would take it up with the executive committee in Waco, and let Cothran know the outcome on Monday, the 16th.

Asserting that he was to be in Dallas on the 13th in any event, Callan testified that he did not make a special trip from Waco to interview Cox and Pursel. He added, in further explanation of his being there, that "it was the policy of the executive committee to make an investigation when there was a severe disciplinary matter pending." Elaborating on this latter point, with the help of leading by Respondent's counsel, Callan stated that it is his "usual practice," when conducting such investigations, "to talk to the people who were primarily concerned . . . to be sure there was no error in transmitting the information . . . to me." If Callan's purpose in proffering this testimony was to dispel any impression that his visit to the terminal on the 13th was other than routine, he did not succeed. Except perhaps for Taylor's telltale trip to Ft. Worth in connection with the Jones discharge, a trip which Respondent has tried to gloss over, there is nothing to suggest Waco involvement of this sort as concerns the four whose terminations are in issue. And, asked on cross-examination to recount other instances in which he had followed this "usual practice," Callan was abjectly vague and unconvincing. Beyond that, if this procedure truly were routine, why were he and Respondent's counsel at such pains to establish that he was to be in Dallas anyway? And, if he were to be in Dallas anyway, why were they at such pains to depict his meeting at the terminal as standard, when it plainly was not?

On Monday, the 16th, W. W. Callan, Jr., company president, telephoned Cothran, informing him that the executive committee had decided to suspend rather than discharge Higgins. Cothran, referring to two past suspensions of Higgins, the most recent for 2 weeks, urged 30 days. Callan agreed.

When Higgins returned to the terminal on Tuesday, the 17th, Andy Callan, the Dallas personnel director, gave him this letter:

> We have been advised that you were noticed on two different occasions on Thursday, July 12, 1979, to be interfering with the work of Mario San Miguel and Roy Vrana.
>
> We are notifying you that since you have been previously warned and have had two weeks disciplinary layoff, and we have again cautioned and warned you, and we are now giving you a thirty day suspension time, July 13 through August 11, 1979, for interference with the work of other employees and failure to follow the instructions of our supervisors. You are hereby notified and can return to work on Monday, August 13, 1979, at your scheduled reporting time of 9:45 a.m.
>
> Any continued violation of our instructions or working rules will result in your termination!

To Higgins' question why he had been suspended three times, whereas "some of the men have been fired that have done the same thing I have done," Callan replied, "No comment." As earlier indicated, Higgins did not dispute any of the factual assertions in the suspension letter.

Higgins' earlier suspensions were in July and August 1978, for 2 weeks and in February 1978, for 3 days. The stated reason for the 2-week suspension was "insubordination and refusal to follow instructions of a supervisor." More specifically, Higgins had bridled when Ken Ashmore, a supervisor but not his immediate supervisor, directed him to be more active in the operation of his forklift. Upon Higgins' return to work after that suspension, Van Aldridge and Cox had a meeting with him, Aldridge warning: "Any other violation or any infraction, however small, [and] you will be terminated immediately."

The letter announcing Higgins' 3-day suspension stated that he had "damaged freight with [his] forklift," that he had "not taken correction from [his] supervisor," that his attendance "has not been good," that he had "already used [his] 1978 vacation," and that he had been "cautioned about too much unnecessary talking while operating the forklift." The letter added that Respondent would be "forced to take drastic corrective action . . . if the quality of [Higgins'] performance is not improved."

While conceding that Respondent has an ongoing problem with needless conversation among its employees, Cox testified that he has never "seen other employees deliberately . . . killing time" the way Higgins did on July 12. Cox testified that he had spoken to Higgins "three to four" times about killing time. Higgins testified that Cox had spoken to him once before. The letter announcing the 3-day suspension extracted in the preceding paragraph indicates that "unnecessary talking" was an issue in February 1978, and the record contains a memorandum prepared by Cox, dated February 13, 1979, reflecting that he had talked to Higgins that day "about killing too much time" conversing with coworkers, and had warned him that he would be suspended "for a few days" if it did not stop.

Higgins concedes that he probably has been suspended more than any other Dallas employee. Neither Vrana nor San Miguel received any kind of reprimand for their parts in the events leading to this latest suspension.

Conclusion: It is concluded that Higgins was suspended because of his union activities in violation of Section 8(a)(3) and (1) of the Act.

This conclusion is grounded on several considerations in addition to Respondent's abundant distaste for the Union:

(a) Higgins had a long history of organizational involvement, of which Respondent again was reminded, by Southerland's testimony, on June 13, 1979.

(b) While giving Higgins a 30-day suspension, Respondent did not give the other parties to the misconduct, Vrana and San Miguel, so much as a talking to. There being no evidence that the conversations had been initiated or prolonged against Vrana's and San Miguel's wishes, this vast discrepancy in treatment cannot be convincingly explained by Higgins' history of sometimes engaging in excessive talk, or by Cox's cavalier assertion that Vrana "is not the type of guy that kills time."

(c) Despite Respondent's best efforts, it is clear that Callan, Sr., went to extraordinary lengths of involvement in this matter, revealing—as did Taylor's trip to Ft. Worth—that it was deemed to entail special considerations and delicate handling. The attempt to portray Callan's involvement as routine, when it obviously was anything but, betrayed a realization—as did the attempted distortion of Taylor's role—that the truth would incriminate.

(d) Had Callan, Sr., been genuinely interested in seeing that "there was no error in transmitting the information" to him, as opposed to satisfying himself that a good case had been built against Higgins, he surely would have seen fit, while in Dallas, to talk to Higgins, Vrana, and San Miguel. That he did not do.

CONCLUSIONS OF LAW

Respondent, as previously concluded, violated Section 8(a)(1) of the Act by:

1. Telling employees that, if the Union got in, it "could happen" that "full-timers would be part-timers and . . . some wouldn't have jobs at all," and that a study was underway that could result in an increase in health insurance benefits, both remarks being designed to discourage support of the Union.

2. Interrogating employees about their union sympathies and activities, cautioning an employee that he "ought to think about" his role with the Union, asking an employee "what kind of improvement" he thought a union could bring, warning an employee not to "harass" his coworkers concerning the Union, and in effect interrogating an employee concerning his union activities by confronting him about soliciting for the Union (harassing) "on company time," and then warning him that he would be subject to termination "if it happened again."

Respondent, as previously concluded, violated Section 8(a)(3) and (1) of the Act by:

1. Discharging Billy Hudson on November 7, 1978; Keiller Davis on November 8, 1978; George Southerland on November 21, 1978; and Stewart Jones on March 15, 1979.

2. Giving Douglas Higgins a 30-day suspension on July 17, 1979, retroactive to July 13.

Upon the foregoing findings of fact and conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[43]

The Respondent, Central Freight Lines, Inc., Ft. Worth and Irving, Texas, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Telling employees that, if the Union got in, it "could happen" that "full-timers would be part-timers and . . . some wouldn't have jobs at all" or that a study is underway that could result in increased benefits, to discourage support of the Union.

(b) Interrogating employees about their union sympathies and activities, cautioning employees that they "ought to think about" their roles with the Union, asking employees "what kind of improvement" they think a union could bring, in effect interrogating employees concerning their union activities by confronting them about soliciting for the Union (harassing) "on company time," or warning employees that they would be subject to termination "if it happened again" that they solicited for the Union "on company time."

(c) Discharging, suspending, or otherwise discriminating against employees because of their union sympathies or activities.

(d) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them under the Act.[44]

2. Take the following affirmative action:

(a) Offer to Billy Hudson, Keiller Davis, George Southerland, and Stewart Jones immediate and full reinstatement to their former jobs, or, if those jobs no longer exist, to substantially equivalent jobs, without prejudice to their seniority and other rights and privileges, and make them whole for any loss of earnings or benefits suffered by reason of their unlawful discharges, with interest on lost earnings.[45]

(b) Make Douglas Higgins whole for any loss of earnings or benefits suffered by reason of his unlawful suspension, with interest on lost earnings;[46] restore to him any seniority and other rights and privileges lost because of that suspension; and expunge from its records any reference to that suspension, notifying him in writing that this has been done.

(c) Preserve and make available, upon request, to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all records nec-

[43] All outstanding motions inconsistent with this recommended Order hereby are denied. In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[44] This being the second time within a year that Respondent has been found in serious violation of the Act, a broad remedial order ("in any other manner") is appropriate. See *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979).

[45] Backpay shall be computed in accordance with *F. W. Woolworth Company*, 90 NLRB 289 (1950). Interest shall be computed as prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977). See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

[46] Backpay and interest shall be computed as set forth in the preceding footnote.

essary to analyze the amounts of backpay and benefits owing under the terms of this Order.

(d) Post at its terminals in Irving and Ft. Worth, Texas, copies of the attached notice attached marked "Appendix."[47] Copies of said notice, on forms provided by the Regional Director for Region 16, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily are posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 16, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

[47] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."